

# Lethal Force, Legal Consciousness and the Social Field of Policing

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[journals.sagepub.com/home/sls](https://journals.sagepub.com/home/sls)**Richard Martin** *London School of Economics, UK*

DIDIER FASSIN, *Death of a Traveller: A Counter-Investigation*. Cambridge: Policy Press, 2021, pp. 160, ISBN: 978-1-509-54740-1, \$64.95 (hbk)

In *Death of a Traveller*, the reader is immersed in the circumstances surrounding the tragic death of Angelo, a thirty-seven-year-old man from the Traveller community in France. Angelo spent his life in and out of the criminal justice system. Two-thirds of the way through his sentence for non-violent thefts and driving without a license, having been released on home leave, he decided not to return to prison. He went to visit his family. This prompted a heavily armed, elite unit of two dozen gendarmerie to arrive at his family's farm in search of him. It did not take long to find him. Angelo was hiding, unarmed, in a lean-to within shouting distance of his family who were forcefully detained by gendarmes in the nearby yard. The officers entered the lean-to. An altercation took place. The officers emerged, unscathed. Angelo came out, dead. According to the officers, they shot Angelo in self-defence. The police investigators and public prosecutor accepted this. The judicial investigation dismissed the case. The appeals against the decision to bring no charges were rejected. So, "No homicide, therefore, no case to answer" (p. *xiii*).

These basic facts that make up the book's real-life story are described by Fassin in the preface as 'simple' because of their grim familiarity:

young men belonging to ethnic minorities who die as a result of encounters with the police; inquiries conducted by colleagues of the presumed perpetrators who confirm their account of the events; prosecutors and judges who decide not to pursue the case and accept their claim of legitimate self-defence.' (*xiii*).

This picture is indeed one readers of *Social & Legal Studies* will likely be familiar with given the journal's recent coverage of racialized criminal justice practices, abuses of

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police power and state unaccountability (see, e.g. Atak, 2021; Loader, 2020a; Triola, 2022). And yet as *Death of a Traveller* unfolds, the story, as one would suspect given its author, is far more complex. Fassin's sociological account of the events surrounding Angelo's death requires the reader to juggle in their mind how, together, penal policies, social prejudices, institutional duplicity, personal decisions, basic inhumanity and sheer misfortune all played their role in Angelo's death. In this review essay, I want to make a modest attempt at introducing this compelling book to the journal's readers. In doing so, I am keen to draw on some of the socio-legal scholarship which can, I think, help us to reflect, in particular, on the themes of legal consciousness, police use-of-force and the social field of policing emergent from the book, as well as connecting them to recent legal developments that are illustrative of the challenges Travellers face in England and Wales.

Fassin is quick to impress upon the reader that 'This is a book of a singular kind. It is not the result of a traditional sociological investigation' (p. xxiii). It has no bibliography; there is barely an academic reference. It has limited conceptual guides to lead us into or escort us out of its chapters, which are plentiful but short. Shorn of the usual scholarly apparatus – cross-references to the literature, citation of official figures, direct quotations from participants, implications for future studies – Fassin makes space for the competing truths of the protagonists which form the evidential basis for his 'counter-investigation'. This distance from the scholarship reflects, in part, Fassin's motivation to research Angelo's death, arising as it did from what he describes as an 'ethical urgency' after meeting Angelo's family and hearing their righteous indignation at his death. For them, it was an 'execution, pure and simple', he had been 'hunted down like a rat' (p. 81, p68). Fassin paused his other projects for several months in an endeavour to do justice to all the versions of the events that day and formulate a plausible interpretation unfettered by the judicial decision which Angelo's family fiercely contested.

Pursuing his counter-investigation, Fassin assembled a catalogue of raw data spanning handwritten accounts of Angelo's family, statements of witness depositions, autopsy and ballistic reports, the public prosecutor's charges and the defence responses, press releases and his own interviews with the protagonists. If Fassin's investigation was free from the institutional norms and procedural rules which police, prosecutors and judges operate within, he remained committed to 'certain fundamental principles of the social sciences' (p. xxiv). For Fassin, these fundamentals are reflected in the fact the book is based on empirical research from a field study; pays equal attention to the words of all those involved; entails critical examination of all available evidence; goes beyond the individual case to reveal the generality of social processes; and requires reflexivity from the author. So too was Fassin mindful of not being forced to choose between outraged condemnation of an injustice and a bare description of the facts. This is the classic dilemma social scientists face, Fassin observes, 'who often profess value neutrality advocated by Max Weber, yet are aware they are bound up in what Norbert Elias described as an involved epistemology' (p. xiv). Fassin avoids this dilemma by adopting both neutral description *and* impassioned judgment consecutively in two distinct sections of the book.

The first part of the book is devoted to the utterances of truth from those closely associated with Angelo's death. It is premised on the idea that all the protagonists in Angelo's death were telling the truth. Each chapter introduces a new character – Angelo's father,

mother and sister, the gendarmerie, the prosecutor, the journalist, and the doctor – all of whom exercise editorial rights over their version of the truth of Angelo’s death, resulting in competing accounts of causation and culpability. With the circumstances in which the gendarmeries opened fire on Angelo never fully elucidated in the official investigation or judicial report, the book airs the ‘discordant voices and incompatible versions’ of Angelo’s death. Even at this early stage, especially noteworthy is the self-acknowledged time and space the officers had in the aftermath of Angelo’s shooting to confer (collude?) with one another (p. 20), but also the control they had over the responding doctor in the immediate aftermath of Angelo’s shooting (pp. 32–33) and the partiality of the police investigators in the preliminary stages of the case against the officers (pp. 78–9). Most of all though, I was struck by the seemingly contradictory ways the law was encountered, understood, and relied upon by the gendarmerie.

There was a strong sense of how the law was *enabling* police (lethal) violence in encounters with citizens, especially those on the periphery of society. In the aftermath of the 2015 terrorist attacks in Paris, a state of emergency was declared giving law-enforcement more prerogatives and extending the use of weapons (p. 41). Then, in 2017, self-defence in French law was expanded, permitting recourse to potentially lethal force against escaped persons and those who might make attempts on the bodily integrity of officers (p. 97). The loosening of self-defence standards in the context of use-of-force by law enforcement agents is a familiar one. In *Da Silva v UK*, for example, the European Court of Human Rights accepted the UK government’s submission that the test of ‘absolute necessity’ in art.2(2) of the European Convention on Human Rights (ECHR) (the right to life), ought to be assessed from the standpoint of the officer themselves, without any requirement of reasonableness by reference to objectively established facts.<sup>1</sup> The focus is thus on whether an honest and genuine belief that the use-of-force was necessary existed; the reasonableness of that belief is only relevant to the determination of whether it was honestly and genuinely held. A particularly pernicious feature of French practice which the book draws attention to, though, is the habit of prosecutors bringing charges against the person injured by police use-of-force for the offence of insulting and resisting a person invested with public authority. In some cases, this offence is used as a prosecutorial bargaining chip to dissuade victims of police violence from pursuing charges and, in other cases, is used to counterbalance any charges which are brought against the officer (p. 99). The result is that the judicial process “generally ends with a dismissal of the case and the exoneration of the officers charged” (p. 61).

But despite the law enabling police use-of-force, the law manages to retain a presence, a status that invites a kind of *reverence* which can be heard in the accounts of the gendarmerie and prosecutors in *Death of a Traveller*. On my reading, I heard neither narratives of unfettered power nor impunity in officers accounts but rather of them having to operate, to an extent, in the long shadow of the law. The law’s presence was one that could be supportive and sympathetic to officers but also unpredictable, a potential source of what has been referred to in the policing literature as ‘in-the-job trouble’ (Chatterton, 1979; Waddington, 1994). The First Officer, for example, is convinced that it is his shot that killed Angelo and has no doubt he will have to justify his actions not only to his superiors, but also in court (p. 20). Both the First and Second Officers are taken to police custody and presented with a charge sheet that indicates

there are plausible reasons for suspecting manslaughter (p. 28) and are then placed under formal investigation (p. 45). The officers interpret this as recognition that the police and prosecutor's version of Angelo's death has been rendered problematic by the examining magistrate. The motivation for the lies allegedly told by the gendarmes, Fassin suggests, is out of fear of criminal conviction from a failed attempt at convincing the tribunal of legitimate self-defence.

The law's presence for Angelo's family is also multi-faceted and contradictory. I came to see Angelo's family— to use the three types of legal consciousness identified by Ewick and Silbey in *The Common Place of Law* – as simultaneously 'before,' 'with' and 'against' the law. Legal consciousness is an attitude or state of mind towards the law produced and revealed in what people do, as well as what they say: it 'is discursively deployed as reflective consideration about day-to-day activities; it is also tacitly enacted as competent social action.' (Ewick and Silbey, 1998: 46). The ways we participate in the construction of legality is neither fixed nor consistent because, as Ewick and Sibley (1998: 51) emphasize, people express 'different understandings, values, and expectations, depending on the situation in which they are speaking and what they imagine accomplishing through their talk' Angelo's family were 'before' the law, substantively, during the legally sanctioned search of their home and, procedurally, when patiently waiting for the judicial investigation to run its course. 'They have to wait... there's not much more they can do from a legal point of view' (p. 55), 'respectful of the legal context... a procedure in whose independence they want to believe' (p. 58). But they were also 'against' the law. Take, for example, Angelo's father's raw challenge to the search of his home, his ending of the interview with the investigator when the character of his son is questioned and his participation in the family's assembly outside the criminal court to demand justice and truth (p. 59). And then at times the family were 'with' the law. On the days before his death, Angelo's father spoke to him on the phone, advising him to return to prison out of 'respect for the law', while Angelo's siblings embarked on legal challenges to appeal the dismissal of the case before the domestic and supranational courts.

Despite being 'against' the law, Angelo's family retained an enduring 'glimmer of hope' that the judicial truth might yet recognize 'a different version of his death' (p. 95). They held onto a desire to be 'with' the law – to invest in, and seek to deploy, the power of the same system that persistently wronged them, de-humanized them. But for Angelo's family, how could the 'judicial truth' manage to retain sufficient moral authority in the specific circumstances they faced, that is its ability to speak to them and the wider Travelling community with virtue given its dark underbelly they witnessed first-hand? And further still, how could a system that produces the 'judicial truth', recognize - in a practical or symbolic sense - let alone restore, the indignity experienced by Angelo's family? Hegemony and counter-hegemony, as Halliday (2019: 871) reminds us, run in tandem and are reflected in the multifaceted and fragmented nature of legal consciousness, such that 'a degree of legal alienation is consistent with the general legitimacy of state law and the general assent of the people to the legal regime' (cf. Hertogh, 2018). Contradictions are not 'cognitive deficiencies of individual speakers' but, as Ewick and Silbey (1998: 51) discovered, 'inhere in the availability of multiple interpretive schemas'. An especially significant interpretive scheme which mediates the tension between hope

and despair around law's relationship to justice Fassin identifies is the judicial truth's striking performative power to articulate a truth revered by society and retained by history. Such reverence is worth fighting for because of its potential to articulate a counter-hegemonic truth and contribute to change. To be 'with' the law is, after all, to be enter 'a terrain for tactical encounters through which people marshal a variety of social resources to achieve strategic goals' and in this game 'people see themselves and others bound by a set of rules that they may also try to change' (Ewick and Silbey, 1998: 28). This is an idea we will return to later in the essay.

The role and effect of situational narratives of the law and the institutional actors which these speak through extend to another theme in the first half of the book: the indignities Angelo's family experienced. In their treatment at the hands of the gendarmes and prosecutor, there is an absence of the most basic humanity, not to mention all four features of what has come to be known in the policing scholarship as 'procedural justice' – voice, neutrality, respect and trust. Recent research suggests that procedural justice, enacted through how officers communicate with and behave towards people, may be especially significant for typically excluded groups because they are likely to be particularly sensitive to signs of respect and inclusion from state actors, like police, which they have the traditionally distrusted (see, e.g. Bradford, 2014; Murphy et al., 2009). Fassin provides powerful qualitative examples of the forms exclusion can take and the effect it has for Travellers. The public prosecutor does not inform the family of Angelo's death until five hours after the shooting took place; indeed, before he has received statements from the family, he suggests, deceitfully, Angelo is still alive (pp. 42–43). The family are excluded by the public prosecutors from the reconstruction of Angelo's death at their farm because, in his opinion, they saw nothing of interest (p. 44). Then they are neither permitted to attend the final hearing at the appeals court, nor avail of victim assistance services (p. 66). It is not until they meet counsel in Paris who agrees to take on their case that someone 'acted human with us' (p. 56).

A concept not used in the book but one which the events just recounted prompt some consideration of is how significant criminal justice actors are conveying identity laden 'sensemaking', especially, again, for marginalized groups whose status in relation to real or imagined communities is especially fragile. Sensemaking is how people socially construct who they are, what they do and why they do it within specific settings (Weick, 1995). It is a process of reflecting on phenomena to enact the social world, and then constituting it through descriptions communicated to and negotiated with others. To make sense is to embark on 'a search for plausibility and coherence, that is reasonable and memorable' that 'maintains the self while resonating with others' (Brown et al., 2008: 1038). Sensemaking is bound influenced by our biographies and beliefs, but also local cultures, norms and values. For Travellers, their distinct heritage and nomadic way of life has left them outside of spatial norms and traditions of the settled community. The prejudices long held by the settled community about the perceived immorality and backwardness of Travellers has contributed to this ethnic group (or class in Ireland) being ostracized and materially disadvantaged, a notable part of which is their continued 'over-policing' and 'under-protection' by law enforcement (Mulcahy, 2012). In *Death of a Traveller*, we can, I think, witness sensemaking at play with the police treatment of Angelo's family signalling, in a deeply damaging way, the worthlessness of Travellers.

Take, for example, Angelo's mother recollection when the gendarmes came looking for Angelo:

You can't treat people and things like that. What are they supposed to have done wrong? What do they want? They have been given no explanation. Only instructions yelled at them. As if they didn't deserve to be talked to normally. Like human beings. Her position is stressful, painful. She complains that her knees hurt. Nobody listens to her (p. 22).

Such behaviour confirms to Angelo's family the prejudices held against them as Travellers by police and, by extension, society. 'Police provide an iconography of the *nation state*', in the words of Loader and Walker (2001: 20), expressing a collective national identity which is strongly linked to community and belonging, operating as a 'condensation symbol' for wider sensibilities and fear. Police action – from the type of operational deployment to the tone of police-citizen interactions – is a powerful mediator of belonging which 'communicate[s] authoritative signals regarding whether and where individuals and groups fit in extant social hierarchies.' (Loader, 2020b: 15). Encounters with police are, in procedural justice parlance, teachable moments, the lessons of which were clear for Angelo's family: the dehumanization of Travellers by the state.

Sticking with the topic of sensemaking, we might also ask how the gendarmes – the men who pulled the trigger and placed their heavy boots on Angelo's parents' frail backs – make sense of their own actions when interacting with the Angelo's family and the Traveller community more generally? How is it that officers come to terms with their own self-identity as men and women wielding lethal power that is only deemed legitimate by virtue of how it is used (in self-defence) and because it is channelled through, and exercised by, an institution that claims to be, and must surely perceive itself to be, a virtuous one? Perhaps we might use the concept of sensemaking and its connection with identity again here, linking it up with power-holders' desire, need even, for self-legitimacy (Barker, 2001), to explain three specific dimensions of the police account in the book: first, the indignity meted out against the family which, Fassin suspects, the gendarmerie cannot understand (p. 96); second, officers' 'surprising descriptions' of how they displayed friendly, benevolent attitudes towards Angelo's family, as well as their strictly technical, neutral language in describing Angelo's death (p. 100); and third, their motivation for purportedly lying about Angelo's behaviour and the officers' actions in the immediate moments leading up to his death.

Fassin's explanation for these three features is a rational one: the gendarmes had an interest to distort the truth to protect themselves and persons close to them – that is to say, their fellow officers but also their families. It is, Fassin writes, 'not hard to divine the motives' because the risk-benefit ratio of presenting a dubious account of the events in the lean-to immediately prior to Angelo's death lies heavily in the officers' favour (Chapter XVI). Might it also be the case, though, that the three dimensions of the police account described are not just rational ploys to stay out of prison or fend off disciplinary action, but also a kind of attempt to clean their 'dirty work' (Hughes, 1958)? In other words, as part of an effort to bolster their self-esteem by embarking on a search for plausibility and coherence, that maintains the self while resonating with others. Sensemaking, after all, is driven more by plausibility, than accuracy, it involves

'a relative approach to truth' in so far as people believe what can account not only for their sensory experience but also for what is emotionally appealing and consistent with self-identities (Weick, 1995: 57). Just how successful officers are in making sense of their power, and the types of narratives they use to 'clean' tainted aspects of police work matters. An emerging body of research is revealing how officers' self-legitimacy and affinity with parts of the police organization has important effects on how officers behave and the models of policing they deliver (Bradford and Quinton, 2014). Most notably, officers more cynical and authoritarian in their attitudes – a particular kind of cultural adaptation within policing – tend to be less certain of their own legitimacy and less inclined to support procedurally just, human rights-based policing (*ibid*).

In the second part of the book, Fassin's careful review of the evidence culminates in a pointed, persuasive account of what might *really* have happened to Angelo in the lean-to on that fateful day. This is what he describes as the 'ethnographic truth'. It is a truth enabled by the level-playing field generated in the first half of the book by allowing each protagonist the opportunity to recount their version of the events of Angelo's death. Most significantly, this marks the first time Angelo's family's accounts are afforded the same value – the same truth-telling power – as the officers whose words are usually afforded greater weight by the judicial truth, especially when the claimants or accused are Travellers. It is these accounts, combined with Fassin's forensic re-analysis of the formal evidence, that enables Fassin to 'formulate a plausible interpretation unfettered by the judicial decision' (p. 4). This leads him to 'a different version of the facts that makes it possible to integrate the contradictions, divergences and discrepancies that remain in the judge's interpretation' (p. *xxiii*). The details of this version, with its vivid depiction of what happened, are best left for the reader to discover for themselves.

According to the 'judicial truth', there was not serious and consistent evidence of a manifest error in the officers' use of their weapons that led to the death of Angelo; the officers had used their weapons purely to contain their target. Fassin de-constructs this truth by identifying the threefold processes of analysis (reduction, exclusion and selection) and the sociological explanations for this process that the judicial truth rests on (the hierarchy of credibility and the power of affinity). Fassin's scepticism of the judicial truth grows as he identifies variations in the statements of the gendarmes, which despite being hard to reconcile with other facts and raising significant questions in need of careful review, remained virtually unexplored in both the police and the judicial investigations (Chapter XVII). The depth and range of Fassin's counter-investigation is evident as he exposes how the judicial truth relied on a modification of the ballistic expert's conclusion on the trajectories of the bullets from the officer's gun to Angelo's body and played down key aspects of the autopsy report casting doubt over the likelihood of the shots being fired purely to control Angelo (pp. 84–5).

The book reveals how the judicial truth is a construction of the criminal process, one which enjoys the formal, authoritative status of the law – it is 'justice's version of the facts' – and is a product of power relations between and within criminal justice institutions. Fassin's juxtaposition of 'judicial' and 'ethnographic' truths chimes with strands of socio-legal scholarship which have, in their own way, sought to de-construct how an event itself, but also narratives and recollections of it, come to be arranged, filtered

and ranked by the criminal process, forming a legal way of knowing which, under closer inspection, reveal as much about criminal justice systems themselves, including their institutional priorities (Viebach, 2017), social prejudices (Hunter et al., 2010) and contested histories (Wilson, 2011). The book's analytical style resonates closely too with McConville, Sanders and Leng's (1991) classic, *The Case for the Prosecution*, which captures the autonomy and discretion police enjoy in the construction of cases, but also how the meaning and status of 'a case' must be understood in terms of the particular time and context in which it is viewed. Only in *Death of a Traveller*, Fassin is working backwards not forwards, asking why charges, in this case against police, did not progress at all.

Fassin makes the claim that 'the judicial truth does not necessarily deliver the account of the truth that rings most true' (p. 124), but an 'ethnographic truth' can. The latter is a truth, he writes, which derives from a 'dual principle' (p. 9): all voices deserve the same degree of attention and conclusions must purely proceed from the correlation of available evidence interpreted in context. The point is to 'produce an account independent of all institutional links, of all professional affinities and, as far as possible, of any prejudice'. (p. 9). One wonders, though, just how plausible is it for an ethnographer – however skilled – to ever really achieve this kind of positionality. It is one thing to expose power relations, affinities, preferences and prejudices of the criminal process and set out in pursuit of a re-calibrated, more factually plausible account of the event at hand. But is it not another thing to suggest one can, and indeed should, do so from what risks sounding like a sterile sociological stance? As researchers at elite institutions, we too are in conversation with institutional audiences and inspired by events, experiences and encounters, personal and professional. How does one adopt and maintain the distance, the independence that the search for an ethnographic truth seems to entail when one is often dependent on powerful institutions for access to the field itself? And how does the search for ethnographic truth impact on the style of research interview used? Does it carry with it an ethical duty, if laying claim to truth rather than narrative accounts, to probe, test and challenge participants – both the powerful and powerless?

Setting aside these questions of an ethnographic truth's objectivity, a further feature of Fassin's sociological investigation which distinguishes it from the criminal investigation itself is that it is 'not limited to the individuals questioned but expands its interrogation to the social conditions of possibility of the events concerned' (p. 9). And here Fassin has little trouble identifying the 'ultimate sociological cause' of Angelo's death: the denigration, stigmatization, marginalization of Travellers which makes possible what would be unimaginable in other social contexts. In Fassin's account of the social structures that contributed to Angelo's death the reader comes to learn more about how the law's status and (in)significance is further bound up with the plight of Travellers. Twenty years on from the enactment of national legislation requiring towns of a population of 5000 citizens to create 'reception grounds' for Travellers, only two-thirds of the planned sites have been provided nationwide, a figure that falls to ten to fifteen percent in wealthier areas, despite various sanctions threatened but rarely applied by public authorities (p. 54). This has left Travellers in France 'confined to abject and unsanitary spaces' next to the trash dump or sewage works, relegated 'to the fringes of society' (p. 53).



In England and Wales there are similarities in how housing laws and policies have contributed to the kind of material disadvantage and social marginalization of the Traveller community Fassin describes. Tensions over where and how Travellers should live have grown over the last half century since the enactment of the Caravan Sites and Control of Development Act 1960, which closed the commons. A report by the Race Equality Foundation (2015) found that Gypsies and Travellers were seven-and-a-half times more likely than White British households to suffer from housing deprivation. Based on official figures, in 2021 there were only 13 permanent sites and five transit sites with any available pitches for Gypsy and Traveller families in all of England (Sweeney and Dolling, 2021). As for the government's last shared ownership affordable homes programme, between 2016 to 2021 grants were awarded for just two Traveller sites across England and Wales.<sup>2</sup> A similar picture emerges from Ireland, where responsibility for providing 'halting sites' for Travellers was devolved to local authorities which have proven reluctant to ensure properly serviced sites in the face of fierce opposition from local councillors and residents' groups (Mulcahy, 2012: 311). Consequently, just a fraction of the Irish government's targets for the provision of Traveller accommodation have been met. The common picture, then, is of a stigmatized group that continues to be pushed, quite literally, further to the margins of society.

But connecting with the law's performative power mentioned earlier, the truth spoken by the judiciary through legal judgments is perhaps more multi-faceted than *Death of Traveller* allows for. In England and Wales, counter-majoritarian schemes like the Human Rights Act 1998 and Equality Act 2010 have empowered the courts to take a less deferential, more assertive voice which can speak its own truth that challenges, not sustains, illiberal manifestations of state power. A notable illustration of this is the Court of Appeal's judgment in *Bromley LBC v Persons Unknown* [2020] The case concerned a local authority which sought, unsuccessfully, to convince the court to impose a de facto borough-wide prohibition on encampments in public spaces for a five-year term aimed at Travellers. It was the first case involving an injunction in which the Gypsy and Traveller community was represented before the High Court and the Court of Appeal; until then, they had not been represented before the court at either the interim or final hearing.<sup>3</sup> Their counsel acted *pro bono*. The Court of Appeal expressly acknowledged from the outset of its judgment the ancestry of these communities, the features of their nomadic lifestyle and their vulnerability as a minority group.<sup>4</sup> One of the numerous shortcomings the Court of Appeal identified in the local authority's attempts to secure its sweeping injunction was the failure to properly engage with the Gypsy and Traveller community, contrary to the Public Sector Equality Duty. But more generally, the Court of Appeal noted the 'inescapable tension between the article 8 rights [the right to respect for private and family life] of the Gypsy and Traveller community [...] and the common law of trespass', and continued that:

The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.<sup>5</sup>

Almost as recently, though, the law of trespass and associated public order powers in England and Wales have been sharpened not for, but against, the Traveller community. Here comes the political truth. Part 4 of the Police, Crime, Sentencing and Courts Act 2022 broadens existing police powers to direct Travellers to leave the land and remove their property,<sup>6</sup> and includes a new offence directed at the Traveller community of residing or intending to reside on land without consent, in or with a vehicle.<sup>7</sup> It is enough for an offence to be committed if damage is likely to be caused, including non-physical damage like excessive noise, smells, litter or deposits of waste. The popular trope of Travellers as a ‘threatening minority’, tainted by their dirt, vagrancy and petty crime (Mulcahy, 2012; Roosvall, 2017), finds expression in the government consultation responses which inspired Part 4 of the 2022 Act. Unlawful interim sites were described as a cause of ‘distress and misery to those who live nearby as areas are blighted by problems such as excessive noise and littering’ (Patel, 2021: 5). The unfairness was against the law-abiding majority: ‘our justice, planning and policing systems are not fair to those who have to live with the consequences of unauthorised encampments.’ (Brokenshire, 2019: 4). Without doubting the real issues unauthorised encampments give rise to or the challenges the fluidity of nomadic living poses to policymakers, there is a broader truth such a framing of the issue fails to address. As the government itself acknowledges, Travellers endure ‘poorer health and lower life expectancy than the general population including due to poor living conditions, high rates of homelessness, low educational achievement and social exclusion’ (Ministry of Housing, Communities and Local Government, 2019: 14). To turn, to criminalization rather than progressive social policies as the response to insufficient interim sites only serves to deepen Travellers’ disadvantage and marginalization, at the same time as reinforcing a pejorative image of them as, in Fassin’s words, ‘undesirable and dreaded’, of belonging on ‘the fringes of society’ (p. 53).

The tricky question, though, is what these kinds of political truths and their sociological antecedents which Fassin exposes mean for the culpability of individual state actors, like police officers, when their actions and decisions seem interwoven with them. In arguing that the ultimate sociological cause of his death is racism just as much as the gendarmes’ fatal shots, Fassin make two specific claims. First, because Angelo was a Traveller he was presumed, without further thought, to be dangerous, someone to be feared, which determined the decision to deploy the specialist armed police unit. Second, the gendarmes who shot Angelo supposed that their abuses of authority against the Traveller community would have neither disciplinary nor legal consequences (pp. 114–5). These claims are supported by research elsewhere which traces hostile and disproportionate police operations against Travellers back to the social imagery of them as disorderly, deceitful and violent which police share with society (Mulcahy, 2012). Thinking about the culpability of the officer, should he or she be allowed to avoid criminal liability when they act on an honest but unreasonable mistake about the threat posed by an individual and that mistake is based on implicit racial biases which are widespread in society? The subjectivist stance taken in England and Wales, allows officers to avail of the defence in such circumstances. By permitting reliance on mistaken associations between ethnic groups and dangerousness, might the state be legitimating a deeply problematic tolerance for racial stereotypes with potentially

lethal consequences? But the possible solution – requiring the officers’ mistaken belief be honest and *reasonable* in so far as it is based on biased beliefs – throws up its own issues of unfairness. Should an individual really be held culpable for homicide where the motivation for pulling the trigger was perceptual judgments influenced by implicit biases that are difficult to avoid and attributable to the kinds of broader social and structural problems just outlined?<sup>8</sup>

*Death of a Traveller* does not provide any clear answers to these questions of legal culpability. Its contribution lies instead in sparking a conversation, grounded in an intimate, humane account of the sociological conditions we ought to bring more to the fore in debates over the honest mistake doctrine. How the criminal law determines an individual’s culpability against the backdrop of sociological causes Fassin exposes is, after all, a reflection of how society evaluates the overall socio-political context of the value of life, both of the police and the policed. As observed by Norrie (2010), the mistaken self-defence doctrine, which makes it so hard to prosecute in shoot-to-kill cases, emanates from the post-1945 social democratic political settlement. But that it functions to protect state agents ‘is an example of specifically legal evolution rather than conscious design, picking up a doctrine that was supposed to cement inclusive citizenship rather than encourage authoritarian division between governer and governed.’ If the problem, in England and Wales at least, is the lack of moral and political evaluation by policymakers in the clarification of the self-defence doctrine in the Criminal Justice and Immigration Act 2008 *Death of a Traveller* is powerful illustration of what is at stake in such discussions and why an inclusive, dignified evaluation is worth having.

To draw this essay to a close, in *Death of Traveller* the reader is invited to hear, through the book’s protagonists, an intimate, affecting account of a family at their most vulnerable, of police officers at their most powerful and of state institutions at their least accountable. It is a meticulously researched catalogue of socio-legal issues, from racialized policing to abuse of force, institutional duplicity to emergency powers, disproportionate sentencing to legacies of social injustice. It successfully opens up the black box of the criminal justice system but also traces how this system is influenced by, and comes to reproduce, the very social disadvantage that, incidentally, police are often proffered as the solution to, whether packaged up as ‘community policing’ initiatives, intelligence-led ‘hot spot’ policing or the expansion of public order powers. The recounting of Angelo’s family’s story is also a special kind of contribution to what Fassin describes as a ‘new moral economy’ of public intolerance and community outrage at deaths of ethnic minority groups at the hands of police and the indignities that spawn from it: the treatment of deceased’s body, the sully of the victim’s family and the institutional lies contributing to a culture of duplicity. In capturing Angelo’s family’s dignity, measured emotion and sheer determination for justice despite the indignities they suffered, Fassin surely realises his desire to offer them a respectability that “the defamatory portraits painted in the criminal investigatory file and media reconstructions” of their son had denied (p. 10).

Whether this ‘new moral economy’ can improve the safety and security of Travellers though, will depend on its ability to generate far greater social capital and, one suspects, in England and Wales a rather different ruling administration than the current one. Back in 2004, the work of the lobby movement, the Gypsy and Traveller Law Reform Coalition, illustrated how systematic change can emerge from alliances formed with

those in the corridors of power. The movement successfully lobbied Parliament to place Travellers issues on the political agenda, resulting in the recognition of Gypsies and Travellers as excluded populations and provisions in the Housing Act 2004 that required local authorities to address the needs of Gypsies and Travellers as part of accommodation assessment requirements (James, 2007: 369). And then in 2012, a Ministerial Working Group published 28 commitments to improving the lives of Gypsy and Traveller communities. Just how much has changed in the years since is questionable though. The government is reportedly resistant to cross-departmental strategies on race equality issues including for Gypsy, Roma and Traveller communities, while public authorities continue to lack the most basic data on health, education and welfare needs of this ethnic group, many of which ought, as a matter of law, to be protected against discrimination by the Equality Act 2010 (Woman and Equalities Committee, 2019). As for policing, forces in England and Wales do not include Gypsies and Travellers in their ethnic monitoring system, preventing an evaluation of community concerns about abuses of power and disproportionate uses of force (Home Office, 2017: 91). Crucially, though, it is the inadequate provision of transit sites for Travellers, accompanied by the recent criminalization of trespass aimed at Travellers, which means they will continue to experience policing as purely an exercise in law enforcement in which they are the target, rather than as opportunity for improving their safety, security and sense of social belonging.

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### Notes

1. *Da Silva v United Kingdom* [2016] 63 E.H.R.R. 12. Interestingly, thus is not, however, the case when it comes to the police disciplinary proceedings, which are governed by a more demanding objective test, set out in the Code of Conduct contained in Sch.2 of the Police (Conduct) Regulations (see Martin, 2021).
2. Bambos Charalambous, Public Bill Committee, 8 June 2021, Col 411.
3. *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, per Lord Justice Coulson, at [2].
4. *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, per Lord Justice Coulson, at [4]-[11].

5. *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, per Lord Justice Coulson, at [100].
6. Police, Crime, Sentencing and Courts Act 2022, section 84.
7. Police, Crime, Sentencing and Courts Act 2022, section 83.
8. These questions are posed by Holroyd and Picinali (2022) in their excellent exposition of implicit bias, self-defence, and the reasonable person.

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